IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE SEVENTEENTH DAY OF AUGUST
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE GODA RAGHURAM

-

WRIT PETITION NO : 15583 of 1996

Between:

The Executive Engineer, Nellore Central Division,
Irrigation Dept., Nellore.

..... PETITIONER

AND

1 Labour Court, Guntur, rep by its Presiding Officer.
2 Mulumudi Peraiah, C/o V.V.Subba Rao, Advocate,
Ramalingapuram, Nellore-3.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a writ of certiorari or any other appropriate writ, order or direction, after calling for the records from the 1st respondent relating to the award passed by him in I.D.No.124/90, dt.4-1-1994 and quash the same.

Counsel for the Petitioner: Government Pleader, representing Addl. ADVOCATE GENERAL

Counsel for the Respondent No.1: G.P.for labour.

Counsel for the Respondent No.2: Mr.P.Sudheer Rao

The Court made the following :

-

ORDER:

The writ petition is by the respondent in I.D.No.124 of1990 – the Executive Engineer, Nellore Central Division of the Irrigation Department. The 2nd respondent workman filed I.D. under Section 2(A)2 of the Industrial Disputes Act, 1947 (for short the Act), challenging his termination/retrenchment from service with effect from 31-1-1981, *inter alia* on the ground that the retrenchment was contrary to the provisions of Section 25-F of the Act.

2. In addition to challenging the retrenchment, the workman also asserted that his juniors, working as N.M.Rs., were absorbed in the work charged establishment, while he alone was singled out for hostile and discriminatory treatment in the matter of absorption.

3. On the basis of the evidence on record, including Exs.W6 and W7 certificates and Ex.W8 statement issued by the Deputy Executive Engineer and Executive Engineer in response to the representation of the workman dated.14-11-1983, the Labour Court, Guntur came to the conclusion that the workman had worked during the periods January 1976 to August,1978, September 1978, March 1979, June, 1979 to August, 1981 for a period that entitles him to the protection and benefits of Section 25-F of the Act. The workman also relied on G.O.Ms.No.143 Irrigation (Services.V) department dated.16.3.1984, (for short G.O.Ms.No.143), an order of the State Government which had been issued subsequent to the workman's discharge whereby N.M.Rs., who rendered 5 years of service with breaks of less than 6 months, were entitled to be converted as members of the work charged establishment. He claimed reinstatement as a member of the work charged establishment on that basis.

4. The Labour Court, Guntur passed an award dated 4.2.1994 holding that the 2nd respondent herein was a workman, his retrenchment was contrary to Section 25-F of the Act, and that he is entitled to be reinstated into the work charged establishment from the date of issue of G.O.Ms.No.143 and that he is also entitled to salary and other benefits from the date of the G.O., till reinstatement. However, the back wages during the period from 13.01.1981 i.e., the date of his retrenchment till 16-3-1984 i.e., the date of the G.O.Ms.No.143, need not be paid. Interest for the back wages and pecuniary benefits to which he was entitled under the award was also directed to be paid at 12 percent per annum.

5. The jurisdiction to adjudicate upon the industrial disputes under Section 2(A)2 of the Act is a special jurisdiction of a limited scope that is available only to interfere and issue appropriate orders in respect of illegal retrenchment/termination or dismissal from service. Other grievances of workman cannot be adjudicated under section 2(A)2 of the Act, and the appropriate remedy in respect of such other grievances of workman are to be pursued under other relevant provisions of the Act. In the circumstances, the award of the Labour Court to the extent it directs that the 2nd respondent herein be reinstated as a member of the work charged establishment is seen to be without jurisdiction. The other findings with regard to the 2nd respondent herein being a workman and his dis-engagement with effect from August, 1981 being illegal and contrary to Section 25-F of the Act are impeccable and are based on a cogent reasoning by the Tribunal below.

6. The Learned Government pleader appearing for the State could not point out any infirmity either in the analysis of the evidence or in the reasoning made by the Labour Court, warranting interference by this Court under Article 226 of the Constitution of India. As the 2nd respondent workman had approached Labour Court nearly 9 years after his retrenchment, the Labour Court rightly denied him the back

wages. The Labour Court, however, erred in concluding that the 2nd respondent herein was entitled to be reinstated into the work charged establishment from the date of issue of G.O.Ms.No. 143 dated.16.3.1984, as the workman had approached the Labour Court belatedly and after nearly 9 years from the date of his retrenchment. In fairness and equity, he should have been directed to be reinstated at best from the date of the institution of the I.D., which was in the year 1990 and as an NMR., the position from which he was retrenched in August,1981.

7. On the above analysis, the award of the Labour Court dated.4-2-1991 in I.D.NO.124 of 1990 is modified as under:

The retrenchment of the workman-2nd respondent herein in August, 1981 is declared as invalid. He shall however, be entitled to be reinstated into service of the writ petitioner herein as an N.M.R., employee with effect from 1-7-1990. The workman shall not be entitled to any back wages from the date of his termination till 1-7-1990. He shall, be entitled to treat the period as continuous service without break for any other benefits that might accrue to him on such treatment. Nothing in this order shall be construed as a limitation on the rights of the writ petitioner empowered to deal with the 2nd respondent either for his absorption into service or for any other purpose in accordance with law.

8. The writ petition is disposed of accordingly. There shall be no order as to costs.

_____

17-08-2004

sh/mrk

To

1.The Executive Engineer, Nellore Central Division,
Irrigation Dept., Nellore.
2. The Addl.Advocate General, High Court Buildings, High Court of A.P.,Hyderabad (out).
3. Presiding Officer, Labour Court, Guntur.
4. 2CCs to G.P. for Labour, High Court Buildings, High Court of A.P., Hyderabad. (out)

5. 2CD copies

THE HON'BLE MR JUSTICE GODA RAGHURAM

-

-

-

-

-

-

-

-

-

-

-

-

-

WRIT PETITION NO : 15583 of 1996

-

-

Dated: 17-08-2004